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MEMORIAL TO HAROLD R. MEDINA

*James L. Oakes**

Harold R. Medina was born on February 16, 1888, and died on March 14, 1990. He was a wonderful human being. He was mentor to thousands, having run a bar review course taken by a whole generation of New York lawyers, having taught a whole generation of students at his own law school, Columbia, and having had a series of brilliant law clerks who learned from him, as one of his former law clerks put it, "what an inspiration a single life can be." He was a superb advocate and judge both at trial and appellate levels. He was a wonderfully articulate speaker and raconteur, and an excellent author. But beyond these many accomplishments, he was a whole human being—spouse, parent, grandparent, great-grandparent, scholar, classicist, community member. He totally immersed himself in everything he was doing, and he did so with the greatest joie de vivre.

Our court convened in extraordinary session on the occasion of Judge Medina's one hundredth birthday, 859 F.2d lxxxix, and once again in a memorial service on June 26, 1990. Some of what I have to say in this little piece is drawn from those who knew Judge Medina long before I did, and who spoke on those two special occasions. Edward Costikyan, for example, his law clerk at the end of the famous Smith Act trial, pointed out that Harold Medina was an enthusiast about a host of pursuits, including, among other things, collecting rare books, reading Latin literature, playing golf, navigating a series of power boats, playing billiards, and growing flowers. His devotion to his college class of 1909 and to Princeton itself was acknowledged by Richard Scribner, Chair of the Alumni Council of Princeton, who spoke of Judge Medina's many stints at the annual "P-Rade" where he brandished the Old Guard cane as the oldest alumnus leading the parade. Maurice Rosenberg attested to Harold's love for his law school, which he chose over Harvard because it was closer than Cambridge to East Orange, New Jersey, where his wife-to-be Etbel lived. Judge Medina began pinch-bit teaching at Columbia Law School early on in his practice, and joined the faculty in 1915 and stayed until 1940. Meanwhile, he had started a cram course for applicants to the bar in 1913 that lasted until 1942, when the Practising Law Institute took over. All the while he was practicing law.

Harold Medina was a trial lawyer who tried a variety of cases, but perhaps his most famous case was *United States v. Cramer*, 325 U.S. 1

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(1945), in which he represented an accused traitor in wartime and won a five-to-four decision in the Supreme Court of the United States. He also represented the New York State Bar Association in a challenge to the nomination of a State Supreme Court Justice. As a trial judge, his most famous case, of course, was the Smith Act case, *United States v. Dennis*, which was, with the possible exception of the Alger Hiss and the Rosenberg cases, the most widely publicized trial of the day. The case, which I happened to see in process upon two or three days, was one that might accurately be called a "political" trial in which the lawyers attempted to bait the trial judge into committing error; but they had no success with this judge. The little I saw of the trial made me think that after the judge saw what the lawyers were doing, he gave them a little bit of their own medicine, too. I am sure, in any event, that he enjoyed the spectacle—a judge trying to do his best to do justice despite these wicked lawyers. Ultimately, some of the lawyers were held guilty of criminal contempt and their convictions were unanimously upheld by our court and by the Supreme Court, divided five-to-three. 343 U.S. 1 (1952). But there was very little, if any, division in public opinion. Judge Medina was a national hero and was very soon approached, he later told us, to run for governor of New York, but decided to remain a judge. I believe he received over fifteen thousand letters congratulating him on standing up to the lawyers in the *Dennis* case.

His next most significant case as a trial judge was the Investment Bankers' case, *United States v. Morgan*, 118 F. Supp. 621 (S.D.N.Y. 1953), an antitrust case that was probably the longest case ever tried in the Southern District of New York until Judge Leval's Pizza Connection case of a couple of years ago—309 courtroom days' worth from November 30, 1950, through May 19, 1953. Two of the lawyers representing five of the seventeen defendants, William Piel and Roy Steyer of Sullivan & Cromwell, supplied the details of the famous trip taken by almost all the lawyers at the behest of the Judge to see the Brooklyn Dodgers play the New York Giants at Ebbetts Field. I say "famous" because the trip made *The New York Times* and was publicized nationwide. Numerous baseball luminaries, including Jackie Robinson and the whole Brooklyn Dodgers team, signed a ball that the Judge no doubt had thrown out. While that last detail may be apocryphal, as some people think Babe Ruth's pointing to the flagpole before hitting a home run against the Chicago Cubs in the World Series is apocryphal, I suspect, knowing Harold Medina, that it was not, and that he did indeed throw out that ball.

When Learned Hand took senior status and while the Investment Bankers' case was still being tried, the Judge was appointed to the Court of Appeals for the Second Circuit by President Truman. He continued to try the case to the end, however, and did not make himself available for work on the court of appeals for some months, to the consternation of my old boss, Harrie B. Chase, then Chief Judge.

I sat with Harold a number of times while he was on the court of appeals. Harold was always completely dedicated to the proposition of knowing all the facts of the case before oral argument. He did not just read the briefs. He would read the appendices and, in many cases, get out the transcripts of trial evidence and read those; he would come to court more fully prepared than most of the lawyers who were arguing before him. He would ask question after question and turn up his hearing aid to make sure that he got the answer. He was an open participant in the proceedings. Everyone tells of his handling of pro se cases in which he would always attempt to bring out the best of the arguments for the pro se appellant, and indeed, in one case after the appellant himself had spoken, asked the man's wife if she had anything to say.

One of the cases that he most enjoyed writing about, I am told, was a case from Vermont, *Achilles v. New England Tree Expert Co.*, involving some cows that were poisoned by a contaminated pond; Judge Medina wrote: "[C]all this particular Vermont judgment what one will, it does substantial justice and we will not disturb it." 369 F.2d 72, 74 (2d Cir. 1966). But he also liked to write what he called "stinkers." He would suggest that a case be assigned to him and then complain about it and complain about the presiding judge who assigned it to him. In one instance that former Chief Judge Wilfred Feinberg recounted, the presiding judge, who had been stung before, was cautious about assigning a case to him and said, "Now, Harold, that opinion will be a long one and lots of tedious work." Judge Medina said, "I know, but it's an interesting one and I want to write it." "Well, all right," said the presiding judge, "but only on one condition: that you don't complain in the lunchroom about the 'stinker' that I gave you." "I'll make no such condition," said Harold Medina. And I recollect the case, *In re Franklin National Bank Securities Litigation*, 574 F.2d 662 (2d Cir. 1978), in which, though it was a "stinker," he not only wanted to write the opinion but insisted on writing it, and when he did write it—I think so that we wouldn't try to edit it or suggest too many changes in it—he had the opinion printed privately before he circulated it to us. So far as I know this was the one and only time that has ever been done on our court. This did not, I may say, deter us from making some suggestions as to certain changes because we thought he had gone a little too far in certain directions. In any event, Judge Medina provided thirty-seven years of valuable service to the court of appeals and was an inspiration to the other members of the court.

On the occasion of his one hundredth birthday, in addition to being honored by the extraordinary session of our court, he was awarded by the City of New York the Fiorello LaGuardia Medal. It had been awarded by Mayor Edward I. Koch previously only to Senator Jacob Javits, Francis T.P. Plimpton, and Walter Cronkite; a nice honor. The text of the medal reads:

To Judge Harold Medina. Strong enough to disdain desires and to despise distinctions. A whole man in himself, polished and wellrounded.

This quotation was one I found for the medal, knowing that Judge Medina loved Horace and knowing also that the quotation aptly suited him.

The Second Circuit Historical Committee is in the process of putting together a collection of Medina memorabilia to display in a showcase as a permanent remembrance of the man in our courthouse. He will be remembered by those who knew him in their hearts with far more warmth and feeling than any collection of memorabilia can evoke. His enthusiasm, his laughter, his colorful expressions—"He tried to give me a lot of that ballyhoo and razzle-dazzle"—his zest for everything, for every day, for everybody, his passion for justice, his joy, his approach to age, his concern for others. My fondest memory of him is in his apartment, where, at the age of ninety-two, he was confined to a wheelchair and a reclining chair, which he preferred to a bed, mixing a pitcher of martinis so that he could have two of them in a straight-up glass with no overflow and no leftover gin and vermouth.

There are very few men of whom it can be said, as Robert Whittinton said of Sir Thomas More, that he

is a man of an angel's wit and singular learning; I know not his fellow, for where is the man of that gentleness, lowliness and affability? And as time requireth a man of marvelous mirth and pastimes; and sometimes of a sad gravity: a man for all seasons.

Harold Medina was just such a man.